

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 03-647

THE STATE OF MONTANA,

Plaintiff and Respondent,

v.

LEVI DANIELS,

Defendant and Appellant.

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OF MONTANA

APPELLANT'S REPLY BRIEF

ON APPEAL FROM THE MONTANA TWENTIETH JUDICIAL
DISTRICT COURT, LAKE COUNTY,
HONORABLE C. B. McNEIL, PRESIDING

APPEARANCES

KRISTINA GUEST
Assistant Appellate Defender
Appellate Defender Office
P.O. Box 200145
Helena, MT 59620

Attorney for the Appellant

MIKE McGRATH
Attorney General
MICHAEL S. WELLENSTEIN
Assistant Attorney General
215 North Sanders
Helena, MT 59620-0145

ROBERT J. LONG
Lake County Attorney
106 Fourth Avenue East
Polson, MT 59860-2125

Attorneys for the Respondent

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§ 41-5-341, MCA (1997) 2

I. ARGUMENT

The state is correct that, pursuant to § 41-5-206, MCA (1997), prosecutors no longer file proceedings in youth court to be “transferred” to district court. However, the district court’s jurisdiction over a juvenile defendant is dependent upon the court granting the state’s motion for leave to file an information in district court. Before the court can grant the state’s motion to file an Information, the court must hold a hearing¹ to determine whether probable cause exists to believe that the youth committed the offense and, that, considering the seriousness of the offense and in the interest of community protection, the case should be filed in the district court. § 41-5-206(3), MCA (1997). The district court does not have jurisdiction over the felony criminal case until it holds this hearing and makes the requisite findings. Until this point, jurisdiction remains in the youth court.

This Court, in State v. Bedwell, 1999 MT 206, ¶12, 295 Mont. 476, ¶12, 985 P. 2d ¶12, explained, “[i]f the court finds that the seriousness of the offense and interests of community protection do not warrant filing the action in district court, **the youth court retains jurisdiction over the matter.**” *citing* § 41-5-206(4), MCA

¹ In his Appellant’s brief, Levi referred to this hearing as a “transfer hearing.” Levi has referred to the hearing as a “transfer hearing” because this had been the traditional language used by this Court. By describing the hearing as a “transfer hearing” Levi had not intended to mislead this Court. Perhaps a better description would have been a “§41-5-206 hearing.”

(1997) (Emphasis added). Adult criminal jurisdiction is not vested with the district court until the district court grants the state's motion for leave to file an Information. Until the court grants the state's motion, "the court simply is determining . . . whether it should exercise jurisdiction over the case." Bedwell, ¶12.

Moreover, although not part of the district court record, the youth court is the first court to obtain jurisdiction over an alleged delinquent youth. This includes youths charged pursuant to § 41-5-206, MCA (1997). Whenever a youth is taken into custody, a custody hearing in youth court² must be held within 24 hours of the youth's detention. See, § 41-5-332, MCA (1997); § 41-5-341, MCA (1997). Therefore, before the hearing in district court to determine whether the district court will grant the state's motion to file an information, the state has already sought the jurisdiction of the youth court through the detention hearing. Then, as this Court in Bedwell held, if the district court does not grant the state's motion to file an information, jurisdiction remains with the youth court.

Since Levi never personally waived his right to a hearing, the district court never obtained jurisdiction over his case. See, Haziel v. United States, 404 F. 2d 1275, 1277 U.S. App. D.C. (1968)(Jurisdiction of the District Court to try the youth's

² This hearing can also be held in front of the justice of the peace or municipal judge. § 41-5-332, MCA.

case depended on a valid waiver. Thus, a waiver by only the defense counsel, and not the youth, was insufficient for the district court to gain jurisdiction. Id. at 1281). The state has not disputed that defense counsel's mere agreement with the prosecutor that Levi intended to waive the hearing, constituted a valid waiver of Levi's right to a § 41-5-206 hearing. Without a valid waiver or a hearing, the district court could not gain jurisdiction over Levi's case.

II. CONCLUSION

Levi never personally waived his right to a § 41-5-206 hearing. Therefore, without either the hearing or a valid waiver by Levi, the district court could not have made the statutory findings required to grant the state's motion for leave to file an Information. Thus, the district court never appropriately had jurisdiction over Levi's case. This Court should remand Levi's case for a proper § 41-5-206 hearing.

Dated this 13th day of December 2004.

MONTANA APPELLATE DEFENDER OFFICE

By: Kristina Guest
Kristina Guest
Attorney for Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing APPELLANT'S REPLY BRIEF was served on counsel of record by depositing a true and correct copy in the U.S. mail, postage prepaid, on the 13th day of December 2004, and addressed as follows:

Mike McGrath
Attorney General
Dept. Justice
P.O. Box 201401
Helena, MT 59620-1401

MICHAEL S. WELLENSTEIN
Assistant Attorney General
215 North Sanders
Helena, MT 59620-0145


Verna D. Stewart

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Brief of Defendant and Appellant is printed with a proportionately spaced Times New Roman non-script text typeface of 14 points; is double spaced except for footnotes and for quoted and indented material; and the word count calculated by WordPerfect 9.0 for Windows, in addition to a manual count of the words contained in footnotes, totals 648 words, excluding table of contents, table of authorities, appendix, certificate of service and certificate of compliance.

Dated this 13th day of December 2004.


Verna D. Stewart